Phelps v. *Mayor, etc., of City of New York*, 112 N. Y. 216. *Contra, City of Newport* v. *Ringo's Ex'x*, 87 Ky. 635. See 11 HARV. L. REV. 475; 21 *ibid.* 225. So under the strict view, the principal case seems a proper subject for equitable relief. Furthermore, a substantial minority of American cases have adopted a looser view, allowing an injunction against the collection of any illegal tax. *Albany Bottling Co.* v. *Watson*, 103 Ga. 503, 508. The reason, perhaps, is that the taxation officials are exercising a position of trust. See COOLEY, TAXATION, 3 ed., 1419. Former cases in the jurisdiction of the principal case incline toward this minority view. See *Lewiston Water & Power Co.* v. *County of Asotin*, 24 Wash. 371. Moreover, by the better view the plaintiff is not estopped to attack the validity of the assessment. *City of Charlestown* v. *County Comm'rs of Middlesex*, 109 Mass. 270. *Contra, Inland Lumber & Timber Co.* v. *Thompson*, 11 Idaho 508, 515. The principal case seems hard to defend upon any theory.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — PRO RATA CLAUSE: OPERATION IN POLICIES NOT COEXTENSIVE. — A policy of insurance on cotton in a warehouse stipulated that the defendant should not be liable for a greater proportion of the loss than the amount for which the defendant insured the said cotton bore to the whole insurance thereon. A second policy covered cotton both inside and outside the warehouse. A fire destroyed all the cotton inside and part of the cotton outside the warehouse. *Held*, that the plaintiff can recover on the first policy only that proportion of the loss which the face value of the first policy bears to the total face value of both policies after subtracting the value of the cotton which was destroyed outside the warehouse. *Liverpool & London & Globe Ins. Co.* v. *Delta County Farmers' Ass'n*, 121 S. W. 599 (Tex. Ct. Civ. App.).

The whole insurance on the cotton in the warehouse is the face value of the policy covering it alone plus the amount for which it may be said to be insured by reason of the second policy. If each policy covered the same property only, this latter amount would be the face value of the second policy. *Farmers Feed Co. of N. J.* v. *Scottish, etc., Ins. Co. of Edinburgh*, 173 N. Y. 241. The same rule has been applied when the second policy covers additional property. *Page* v. *Sun Ins. Co.*, 74 Fed. 203. But such a rule would involve the anomalous conception that the blanket policy over-insured the cotton in the warehouse, though it under-insured the aggregate property covered by it. See *Ogden* v. *East River Ins. Co.*, 50 N. Y. 388, 391. It is submitted that under these circumstances the blanket policy insures the cotton in the warehouse not exceeding its total value. Some courts, indeed, hold that the blanket policy insures it only for that proportion of its value which the face of the blanket policy bears to the value of all the cotton covered. *Ogden* v. *East River Ins. Co.*, *supra;* 2 PHILLIPS, INSURANCE, § 1263 *a*. In deciding that the cotton inside the warehouse is insured by the second policy for the face value of the policy less the amount of the loss on the cotton outside, the principal case seems indefensible in theory. But see *Meigs* v. *London Assurance Co.*, 126 Fed. 781. In practice, if enough outside property were destroyed, this rule might prevent the defendant from pro-rating at all.

INSURANCE — RIGHTS OF INSURER — RELEASE OF WRONGDOER BY INSURED. — An insurance company paid the insurance on a building destroyed by fire caused by the defendant's locomotive. With knowledge of this payment, the defendant received from the owner a release from all liability. Subsequently, an action for the benefit of the insurance company was brought in the name of the owner. *Held*, that the release is no bar to the action. *Cushman & Rankin Co.* v. *Boston & Maine R. R.*, 73 Atl. 1073 (Vt.).

An insurance contract is a contract of indemnity. *Castellain* v. *Preston*, 11 Q. B. D. 380. And because of its liability to indemnify, an insurance company, immediately after the destruction of insured property, has a beneficial right against a wrongdoer who caused the loss. *Hart* v. *Western Railroad Corporation*, 13 Met.

(Mass.) 99. Because a release after the loss cuts off this right to a remedy over on payment of the insurance, it discharges the company. *Dilling* v. *Draemel*, 16 Daly (N. Y.) 104. The insurance company, however, is entitled only to the right the insured had. And if a contract made before loss prevents the insured from suing the wrongdoer, the company has no claim against the latter. *Savannah Fire & Marine Ins. Co.* v. *Pelzer Mfg. Co.*, 60 Fed. 39. Upon paying the insurance, the company is subrogated to the rights of the insured. *Liverpool & Great Western Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397, 462. Yet since the claim is still in the name of the insured, it would seem that a release for consideration, given by him to a wrongdoer ignorant of the payment, should be effective. But if the release were gratuitous, it should be set aside. A release taken with knowledge of the payment, as in the principal case, is a fraud on the insurance company and despite consideration is therefore void. *The Monmouth County Mut. Fire Ins. Co.* v. *Hutchinson, etc., Transportation Co.*, 21 N. J. Eq. 107.

JOINT TENANCY — WHETHER JOINT TENANCY OR TENANCY IN COMMON CREATED. — An owner of a term for years granted it by deed to A and B, "their executors, administrators, and assigns." *Held*, that they take as joint tenants. *Goddard* v. *Lewis*, 25 T. L. R. 813 (Eng., K. B. D., July 31, 1909). See NOTES, p. 214.

JUDGMENTS — FOREIGN JUDGMENTS — EQUITABLE DECREE AS A CAUSE OF ACTION IN ANOTHER STATE. — In divorce proceedings between A and B, both of whom were before it, a Washington court ordered that B convey to A certain land situated in Nebraska. B fraudulently conveyed the land to C who had notice of the decree. Relying on the Washington decree, A brought a bill in a Nebraska court to quiet title to the land, but was denied relief on the ground that the foreign court had no jurisdiction. *Held*, that the Nebraska decision does not deny full faith and credit to the foreign decree. *Fall* v. *Eastin*, U. S. Sup. Ct., Nov. 1, 1909.

Justice Holmes, in a concurring opinion, intimates that the foreign decree should have the same effect on the equitable obligations of the parties and their privies as a foreign decree for specific performance of a contract. But he points out that whatever the result reached by the court on this point, the requirements of full faith and credit have been complied with. For a discussion of the principles involved, see 21 HARV. L. REV. 210.

QUASI-CONTRACTS. — NATURE AND SCOPE OF THE OBLIGATION — RECOVERY FROM ESTATE OF MONEY LOANED TO EXECUTRIX. — An executrix, having mismanaged an estate, was forced to borrow money of the plaintiff, in order to pay taxes on realty belonging to the estate. After the executrix became insolvent, the plaintiff sued in equity to recover the loan. *Held*, that he can recover directly from the estate. *Stillman* v. *Holmes*, 54 Ohio L. Bull. 84, No. 44 (Oh., Franklin County Ct., Sept. 20, 1909).

Since an executor has no authority to borrow money, the plaintiff had no right at law against the estate. *Merchants' Nat'l Bank* v. *Weeks*, 53 Vt. 115. And since the plaintiff was neither liable for nor interested in the payment of the taxes, he could not have been subrogated to the rights of the tax collector. *Brown* v. *Hooks*, 65 S. E. 780 (Ga.). But as an executor may ordinarily be reimbursed for money spent for the benefit of the estate, one lending him money has a remedy by way of equitable attachment of the executor's claim against the estate. *Williamson's Appeal*, 94 Pa. St. 231. See 14 HARV. L. REV. 67. But this procedure is impossible in the case under discussion, because an executor by misconduct loses his right to reimbursement. *In re Johnson*, 15 Ch. D. 548. The court, however, seems justified in holding that resort to these derivative remedies is here unnecessary; for since it is unconscionable for the estate to profit at the plaintiff's expense, the estate is under a quasi-contractual obligation to reimburse him.